Editor's note: Reconsideration granted, decision vacated, BLM decision aff'd in part, rev'd in part and remanded -- 109 IBLA 96 (June 5, 1989)

JOAN CHORNEY

IBLA 87-462 Decided March 21, 1989

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, cancelling oil and gas lease W-100165.

Reversed.

1. Mineral Leasing Act: Lands Subject to--Oil and Gas Leases: Cancellation--Oil and Gas Leases: Lands Subject to

A decision to cancel an oil and gas lease on the basis of circumstances existing at the time of lease issuance will be reversed in the absence of a showing that the lease was issued without legal authority under relevant statute or regulation regardless of the existence of grounds which would have been sufficient to support an exercise of the Department's discretionary authority to reject a lease offer for the lands.

APPEARANCES: Joan Chorney, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Joan Chorney appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated April 2, 1987, cancelling oil and gas lease W-100165.

Lease W-100165 was originally issued effective July 1, 1986, to Howell Roberts Spear who was the priority applicant for parcel WY-465 in the February 1986 simultaneous oil and gas filing. The lands described in the lease encompass 80 acres situated in the N\SE^ sec. 25, T. 50 N., R. 96 W., sixth principal meridian, Big Horn County, Wyoming. On July 22, 1986, Spear executed an assignment of the lease to Chorney which was approved by BLM with an effective date of November 1, 1986.

In its decision cancelling the lease, BLM explained that the entire lease had been found to be within the Sheep Mountain Wilderness Study Area (WSA) and that the tract should not have been listed on the February 1986 list of lands available for filing of noncompetitive lease applications. BLM cited the Department of the Interior and Related Agencies Appropriations Act for 1984, P.L. 98-146, 97 Stat. 919, prohibiting leasing of land within

a WSA, as authority for lease cancellation. The decision stated that "similar language is in all subsequent appropriations acts."

In her statement of reasons appellant contends that she is a bona fide purchaser whose interest in the lease cannot be cancelled. Appellant asserts that she acquired her interest in the lease for valuable consideration and without notice of any possible violation of statutes or regulations in the issuance of the lease. Appellant stated that a search of the case file prior to her purchase of the lease did not show any irregularities in the issuance of the lease to Spear and did not reveal that the lease was located in a WSA. Citing Winkler v. Andrus, 614 F.2d 707, 713 (10th Cir. 1980), appellant argues that she had no duty to search beyond BLM records. Appellant also notes that under Geosearch, Inc. v. Watt, 721 F.2d 694, 699 (10th Cir. 1983), a bona fide purchaser is entitled to assume that BLM properly discharged its duties.

While appellant acknowledges that the Secretary of the Interior has broad authority to cancel oil and gas leases for violations of the Mineral Leasing Act and regulations issued pursuant to the Act, as well as for administrative errors committed prior to lease issuance, she asserts that the Secretary's authority is limited by the bona fide purchaser amendment of the Mineral Leasing Act.

As a threshold matter, we note that the Secretary of the Interior has the authority to cancel any lease issued contrary to law because of the inadvertence of his subordinates. Boesche v. Udall, 373 U.S. 472 (1963); Hanes M. Dawson, 101 IBLA 315 (1988); D. M. Yates, 74 IBLA 159 (1983); Fortune Oil Co., 69 IBLA 13 (1982). As the Board stated in D. M. Yates, supra at page 161:

> Appellant contends that Boesche v. Udall, supra, cited by BLM as authority for the cancellation of his lease * * * does not in fact authorize such a postlease cancellation. Boesche v. Udall, supra, however, observes that whereas section 31 of MLA [Mineral Leasing Act, as amended, 30 U.S.C. | 188 (1982)] reaches only cancellations based on postlease events, it leaves unaffected the Secretary's traditional administrative authority to cancel on the basis of the prelease factors. In fact, Boesche clearly states that the Secretary should have the power to correct his own errors. Boesche v. Udall, supra, at 478.

See also Lee Oil Properties, Inc., 85 IBLA 287, 290 n.2 (1985).

Appellant asserts that BLM's authority to cancel oil and gas leases is limited by the bona fide purchaser provision set forth at 30 U.S.C. | 184(h)(2) (1982). That statute provides in pertinent part that:

> The right to cancel or forfeit for violation of any of the provisions of this chapter shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, [or] interest in a lease, * * * which lease [or] interest * * * was acquired or held by a qualified person, association or

> corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which
> the lease [or] interest * * * was acquired * * * may have been canceled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation.

This provision provides protection to "good faith purchasers whose predecessors-in-interest were in violation of some provision of the act, such as acreage limitation provisions, and not for protection of purchasers of leases erroneously issued for lands not subject to noncompetitive leasing." Oil Resources, Inc., 14 IBLA 333, 337 n.1 (1974). Thus, the Board has consistently held that where the lease is subject to cancellation because BLM lacked authority to issue it, the bona fide purchaser protec-tion afforded by 30 U.S.C. | 184(h)(2) (1982) does not apply. See Hanes M. Dawson, supra (lands within a designated Wilderness Area not subject to leasing); Lee Oil Properties, supra (lands leased noncompetitively when only subject to competitive leasing); William L. Ahls, 85 IBLA 66 (1985) (lands leased under Mineral Leasing Act of 1920, when only subject to leasing under the Right-of-Way Leasing Act of 1930); Oil Resources Inc., supra (lands within a wildlife refuge not subject to leasing).

Thus, if the Department was legally precluded by Act of Congress from issuing an oil and gas lease for the lands in the WSA, the decision of BLM must be sustained regardless of the fact that appellant may have qualified as a bona fide purchaser.

[1] The difficulty with the BLM decision is the failure to cite any relevant statutory authority for the prohibition of leasing within a WSA at the time appellant's lease was issued. It is true that The Department of the Interior and Related Agencies Appropriations Act for 1984, P.L. 98-146, 97 Stat. 919, 951-52, precludes the expenditure of appropriated funds to issue leases within WSA's. 1/ However, the lease at issue in this appeal was issued in June 1986 and not in fiscal 1984. Research of the Appropriations Act for fiscal 1986 and other mineral leasing legislation fails to disclose the existence of a prohibition which was effective at that time. 2/ It apparently was the policy of BLM at the time not to issue oil and gas leases for lands within a WSA. This policy is certainly sustainable when it

---

1/ The Department of the Interior and Related Agencies Appropriations Act for 1984 (Appropriation Act), P.L. 98-146, 97 Stat. 919, 951-52, provides in pertinent part that:

"[N]one of the funds provided in this Act shall be obligated for any aspect of the processing or issuance of permits or leases pertaining to exploration for or development of coal, oil, gas, oil shale, phosphate, potassium, sulphur, gilsonite, or geothermal resources on Federal land
* * * within Bureau of Land Management wilderness study areas."

2/ It should be noted that issuance of leases within WSA's designated by BLM has subsequently been barred by enactment of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, P.L. 100-203, | 5112, 101 Stat. 1330-256, 1330-262 (amending the Mineral Leasing Act of 1920, to be codified at 30 U.S.C. | 226-3).

is invoked to support the exercise of the Secretary's discretion in the public interest to refuse to issue a lease for a tract of land. See Udall v. Tallman, 380 U.S. 1, 4 (1965). However, this discretionary authority will not support the cancellation of an issued lease. See Carl J. Taffera, 71 IBLA 72 (1983). This Board has previously noted in the context of a lease erroneously issued for lands within a WSA that it is improper to cancel an oil and gas lease where BLM has approved an assignment of the lease to a bona fide purchaser and it has not been shown that the lease was issued in violation of any statutory or regulatory prohibition. Champlin Petroleum Co., 99 IBLA 278 (1987). 3/ In the absence of any statutory or regulatory prohibition on issuance of the lease at issue here, the decision of BLM cannot be sustained on the record.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member

3/ In Champlin the authority apparently relied on by BLM in cancelling the lease was BLM Instruction Memorandum No. 87-237 (Jan. 7, 1983) which called for cancellation of leases within WSA's issued after Dec. 31, 1982.